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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Agrivetica, S.A.

Serial No. 76/192,661

Lawrence E. Abelman of Abelman, Frayne & Schwab for
Agrivetica, S.A.

Zhaleh S. Delaney, Trademark Examining Attorney, Law Office
101 (Angela Bishop-Wilson, Acting Managing Attorney).

Before Simms, Cissel and Seeherman, Administrative
Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On January 10, 2001, applicant, a Spanish corporation with its address in Sevilla, Spain, filed the above-referenced application to register the mark "OLIVE ANDALUCIA" on the Principal Register for "edible oils," in Class 29. The basis for filing the application was applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with these products.

The Examining Attorney refused registration under Section 2(e)(2) of the Lanham Act, 15 U.S.C. Section 1052 (e)(2), on the ground that the mark is primarily geographically descriptive of the goods identified in the application. She reasoned that the primary significance of the term "ANDALUCIA" is geographic and that applicant's goods appear to come from the geographical place named in the mark, so the consuming public would associate the goods with Andalusia. Further, she concluded that by adding the word "OLIVE," which is generic in connection with the goods specified in the application, applicant did not obviate the basis for refusal under Section 2(e)(2) of the Act.

Submitted in support of the refusal to register were excerpts from a number of newspaper stories which show that Andalusia is a region in Spain which is known for its olive groves and olive oil.

In addition to refusing registration, the Examining Attorney required applicant to disclaim the exclusive right to use the word "OLIVE" apart from the mark as shown.

Applicant responded to the first Office Action by amending the application to disclaim "'OLIVE" and by arguing that the refusal is improper because "'OLIVE ANDALUCIA' could well identify an individual[,] rather than a geographic region." Applicant attached a telephone

directory which identified an individual named "Catalina Andalucia" in Florida and a Netscape Internet search which identified a "V. Andalucia," with a New Jersey address.

The Examining Attorney accepted the disclaimer, but was not persuaded by applicant's argument or evidence to withdraw the refusal to register. In further support of the refusal, she submitted the results of an online search she conducted. The search revealed that the total number of U. S. residential listings under the surname "Andalucia" was one. In addition, she submitted more evidence retrieved from the Internet indicating that the Andalucia region in Spain "is the world's foremost producer of olive oil," that "80 percent of the olive oil production in Spain comes from the Andalucian province," and that "Andalucia's olive oil is known for its purity and pungent flavour..."

Applicant timely filed a Notice of Appeal, followed by an appeal brief. The Examining Attorney filed her brief on appeal, and applicant filed a reply brief, but applicant did not request an oral hearing before the Board.

Accordingly, we have resolved this appeal based on the written record and arguments presented by applicant and the Examining Attorney in view of the relevant legal precedents.

The sole issue before us in this appeal is whether the mark applicant seeks to register, "OLIVE ANDALUCIA," is primarily geographically descriptive of "edible oils" (which by definition include edible olive oils) from Andalusia, Spain. We hold that it is, and therefore that the refusal to register under Section 2(e)(2) of the Lanham Act is well taken.

As applicant acknowledges, the test for registrability under this section of the Act involves determining whether the primary significance of the mark is geographical, and if it is, whether consumers will make an association between the place named in the mark and the goods. If the geographical significance of the term is its primary significance and the geographical place is "neither obscured nor remote, a public association of the goods with the place may ordinarily be presumed from the fact that applicant's own goods come from the place named in the mark." In re Handler-Fenton Westerns, 214 USPQ 848, 850 (TTAB 1982).

The materials of record in this application, including the atlas and encyclopedia excerpts (of which we may take judicial notice) submitted with the brief of the Examining

Attorney,¹ clearly establish that Andalucia is a large geographic area in Spain which is known for its production of olive oil. The record shows that the Andalucia region is neither obscure nor remote. As the Examining Attorney points out, it is only slightly smaller than the state of Indiana, and its population is not insignificant.

Applicant is located in Sevilla, which the record shows is within the Andalucia region. Applicant does not deny that the goods will in fact originate there, so even if the region were not known for its olive oil, a goods/place association could be presumed. In re California Pizza Kitchen, 10 USPQ2d 1704 (TTAB 1989); In re Handler Fenton Westerns, Inc., supra.

The addition of the generic or highly descriptive term "OLIVE" to the geographical designation "ANDALUCIA" does not alter the geographic descriptiveness of the mark applicant seeks to register. In re Wine Society of America Inc., 12 USPQ2d 1139 (TTAB 1989); and In re California Pizza Kitchen Inc., supra. In fact, considering the strong

¹Applicant's objection to the Board's consideration of the text from National Geographic Magazine and the fax transmission from Steven Spar of the Translation Branch of the United States Patent and Trademark Office, both of which were submitted with the Examining Attorney's brief, is sustained. We have not considered this untimely-submitted evidence. The objection is overruled, however, as to the information from the encyclopedia and from the atlas because it is within our discretion to take judicial notice of such reference works.

association between olives and Andalucia shown by this record, adding the word "OLIVE" to "ANDALUCIA" serves only to emphasize the geographic significance of the mark.

Applicant's arguments to the contrary are not well taken. That "Andalucia" is an obscure, rare surname in the United States does not overcome the strong evidence presented by the Examining Attorney that its primary significance is geographic. Applicant's contention that "the visual and verbal impression evoked by ANDALUCIA conjures up many other meanings, including that of a female name- ANDA LUCIA," is mere speculation, unsupported by any evidence of record in this case.

DECISION: For the reasons set forth above, the refusal to register under Section 2(e)(2) of the Act is affirmed.